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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/646,066

08/21/2003

Elliot A. Gottfurcht

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8791 7590 12/28/2006  
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EXAMINER

CHAMPAGNE, DONALD

ART UNIT

PAPER NUMBER

3622

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/28/2006

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/646,066

Applicant(s)

GOTTFURCHT, ELLIOT A.

Examiner

Donald L. Champagne

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2006.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-107 is/are pending in the application.  
4a) Of the above claim(s) 21,22 and 29 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-20,23-28 and 30-107 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4 sheets.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6 November 2006 has been entered.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20, 23-28 and 30-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US006571279B1) in view of Szabo (US006868525B1).
4. Herz et al. teaches (independent claims 1 and 11) a method, and a machine-readable medium containing said method, the method comprising:

receiving a plurality of bids to display content, each bid of the plurality of bids associated with a plurality of locations and fixed time slots (col. 5 lines 15-30 and col. 11 lines 12-16 and 22-32, where *time slots* is a term of art reading on "fixed time slots", meaning any given or certain time of day period, Herz et al. col. 11 lines 52-57 and *interval of time* at col. 5 line 24, and the interview summary made of record on 14 December 2006);

ranking the plurality of bids according to a criterion for each location and fixed time slot combination (col. 5 lines 15-26 and col. 11 lines 52-59, where *selects the highest bidder* reads on "ranking the plurality of bids"); and;

displaying the content of a highest ranked bid during a time slot for each user from a corresponding location (col. 11 lines 57-58).

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5. Herz does not teach displaying through a hierarchical navigation search interface. Szabo teaches displaying through a hierarchical navigation search interface (col. 17 line 54 to col. 18 line 6, and col. 47 lines 37-65, incl. Fig. 9). Because Szabo et al. teaches that a hierarchical navigation search interface makes large quantities of information understandable (col. 3 lines 6-10 and 47-51, and col. 7 lines 31-35), and because Szabo et al. teaches that it is especially useful for targeted advertising (col. 18 lines 8-14), it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Szabo to those of Herz et al.
6. Szabo also teaches at the citations given above claims 2, 3, 6, 9, 10, 12, 13, 16, 19, 24, 27, 30-33, 38, 43, 44, 51, 58, 59, 60-63, 68, 73, 74, 81, 88 and 89.
7. Szabo also teaches claims 35-37 and 65-67 (col. 29 lines 1-5 and col. 17 lines 21-24); claims 40 and 70 (col. 15 lines 32-35); claims 42 and 72 (col. 27 lines 37 and 50) claims 49 and 79 (col. 28 lines 1-2); and claims 90 and 91 (col. 27 lines 59-61).
8. Herz et al. also teaches at the citations given above claims 4, 5, 14, 15, 92-95, 97-101 and 103-107.
9. Herz et al. also teaches claims 7, 8, 17 and 18 (col. 25 lines 46-55, where user use of the *identifier* reads on user input), claims 23 and 26 (col. lines 59-62 and 17-22, and col. 5 lines 22-23), claims 34 and 64 (col. 11 lines 26-32) and claims 96 and 102 (col. 40 lines 2-3).
10. Neither reference teaches (claims 10, 20, 47, 52, 53 and 77, 82, 83) interactive television using matrix based hierarchical navigation. Official notice is taken (MPEP § 2144.03) that interactive television using matrix based hierarchical navigation (e.g. for program directories) was well known at the time of the instant invention. Because it is obvious to use the well known, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add this limitation to the teachings of the references cited above. Official notice of this common knowledge or well known in the art statement was taken in the last Office action (mailed 21 September 2006, para. 12). This statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (MPEP 2144.03.C.) See para. 15 below.
11. Neither reference teaches claims 25, 28, 39, 41, 45, 46, 48, 50, 54-57, 69, 71, 75, 76, 78, 80 and 84-87. These limitations were well known at the time of the instant invention.

Furthermore, all are of a nature such that it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add these teachings to those of the references cited above. Official notice of this common knowledge or well known in the art statement was taken in the last Office action (mailed on 23 March 2006, para. 15). This statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (MPEP 2144.03.C.)

### ***Response to Arguments***

12. Applicant's arguments filed with an amendment on 13 November 2006 have been fully considered but they are not persuasive. Some arguments have been addressed by modification of the rejection to accommodate the amendment. The following comments are also offered.
13. Applicant argues (middle of p. 18), "Herz does not generate a ranking for each location and fixed time slot combination." Para. 4 above explains where Herz et al. teaches this limitation.
14. Applicant argues (2nd para. on p. 19), "The system of Herz relies on each targeted individual to have a 'beacon.'" Herz et al. has no such limitation. Herz et al. teaches a variety of means for determining the user's location, including cell phone tracking (col. 3 line 9 to col. 4 line 10, esp. col. 4 lines 6-10).
15. Traverse of a taking of Official Notice - Applicant has traversed the examiner's taking of official notice with regard to claims 10, 20, 47, 52, 53 and 77, 82, 83 (at para. 12 of the last Office action mailed 21 September 2006). However, applicant has not provided adequate information or argument so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the official notice (MPEP § 2144.03). An effective traverse must be based on alleged evidence, not mere denial. Applicant could, for example, have gone on record with the alleged earliest date at which matrix based hierarchical navigation became common in interactive television. The examiner would then have been compelled to produce earlier references in order to maintain the taking of official notice. But applicant submitted no such evidence. Therefore, the presentation of a reference to substantiate the official notice is not deemed necessary. The examiner's taking of official notice is maintained.

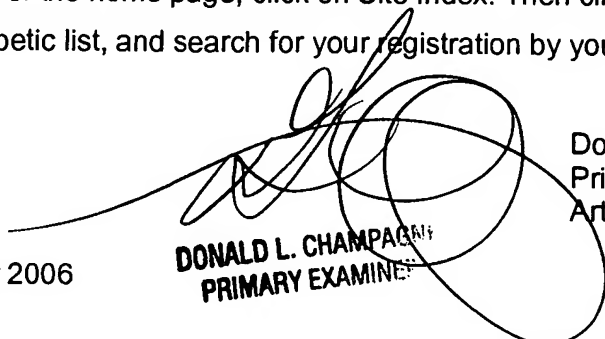
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16. Applicant argues (pp. 20-21) that the taking of official notice with respect to claims 25, 28, 39, 41, 45, 46, 48, 50, 54-57, 69, 71, 75, 76, 78, 80 and 84-87 should be reversed because these claims have not been substantially amended by the amendment of parent claims 1 and 11. Claims 1 and 11 were substantially clarified and simplified, but not amended sufficiently to over come the references previously made of record.

**Conclusion**

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 8:30 AM to 7 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at [donald.champagne@uspto.gov](mailto:donald.champagne@uspto.gov), and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717.
18. The examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone number for all *formal* fax communications is 571-273-8300.
19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
20. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, [www.uspto.gov](http://www.uspto.gov). At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

16 December 2006

  
DONALD L. CHAMPAGNE  
PRIMARY EXAMINER

Donald L. Champagne  
Primary Examiner  
Art Unit 3622